

# U.S. Supreme Court

## Davis v. Davis

Davis v. Davis, 305 U.S. 32 (1938)

No. 16

Argued October 14, 1938

Decided November 7, 1938

305 U.S. 32

1. Under Art. IV, § 1, of the Constitution and R.S. § 905, a decree of a court of Virginia is entitled to the same faith and credit in the courts of the District of Columbia as it has by law or usage in the courts of Virginia.

P. 305 U. S. 39.

2. Whether the matrimonial domicil is the domicil of the husband depends upon the facts and circumstances of the case.

P. 305 U. S. 41.

3. A husband obtained, on the ground of cruelty, a decree of separation from his wife in the District of Columbia, where both resided. The decree gave her custody of one child and monthly alimony. Some years later, the husband established his residence in Virginia and sued in a Virginia court for absolute divorce on the ground of desertion. Notice was served personally on the wife in the District of Columbia, where she continued to reside, and she filed in the Virginia court a plea stating that she appeared there "specially and for no other purpose than to file this plea to the jurisdiction of the court." The plea alleged that neither she nor the husband had been a resident of Virginia for a year before commencement of the suit, and asserted that he was not then a *bona fide* resident there, but that the residence he was attempting to establish was for the sole purpose of creating jurisdiction in the court to hear and determine the suit for divorce, and was therefore a fraud upon the court, and not residence in contemplation of law. It prayed judgment whether the court "can or will take any further cognizance of the action aforesaid." There was a decree of reference to a commissioner to ascertain and report whether the court had jurisdiction and whether a divorce should be granted, the decree reciting, *inter alia*, that counsel had been heard in argument. The commissioner reported that, by stipulation of counsel, he had limited his inquiry to the jurisdiction; that he had taken all the testimony submitted by the parties, and that, in his opinion, the husband was a *bona fide* resident of

Virginia, and that the court had jurisdiction to hear and determine the cause. There was a hearing upon the wife's exceptions to the report, after which the court found that the husband had been a resident of the Virginia county for the requisite time, and that it had jurisdiction of the subject

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matter and of the parties, and confirmed the report. The court granted the wife further time in which to appeal or to answer, but she did neither. The cause proceeded, and there was a final decree of absolute divorce upon the ground of willful desertion, with an allowance for support of the child, but no alimony for the wife, the decree reciting that there had been a hearing upon specified papers and depositions taken before a commissioner pursuant to notice served in the county, on counsel who had entered special appearance for respondent, and upon her personally in the District of Columbia.

*Held:*

(a) Construing the wife's appearance as special, she was nevertheless bound by the finding of the Virginia court on residence and jurisdiction, and the decree was enforceable in the courts of the District of Columbia. *Haddock v. Haddock*, 201 U. S. 562, distinguished.

P. 305 U. S. 40.

(b) The wife's participation in the Virginia litigation was such as to amount to a general appearance.

P. 305 U. S. 42.

No question is presented in this case as to the power of the District of Columbia court over alimony.

96 F.2d 512 reversed.

On certiorari, 304 U.S. 552, to review a decree refusing recognition to a Virginia decree of absolute divorce secured by a husband who changed his residence to that State from the District of Columbia.

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